



**Malenya v Mbaria & another (Civil Appeal (Application)
167 of 2006) [2023] KECA 537 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KECA 537 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 167 OF 2006**

KI LAIBUTA, JA

MAY 12, 2023

BETWEEN

EMMAMUEL MALENYA APPLICANT

AND

BENSON IRUNGU MBARIA 1ST RESPONDENT

MUCHANGI NDUATI NGINGO 2ND RESPONDENT

(Being an application to substitute the applicant, Emmanuel Malenya for the deceased appellant, Enock Irungu Malenya, in the appeal from the Judgment and Decree of the High Court of Kenya at Nairobi (Mugo, J.) dated 16th June 2006) in H.C.C.A No. 2213 of 2016)

RULING

1. By a Notice of Motion dated March 4, 2023 and erroneously made under Order 24 rule 10 and Order 51 rule 1 of the Civil Procedure Rules, 2010 (which relate to death and bankruptcy of parties, and to the form of applications in lower courts respectively), Emmanuel Malenya prays for: an order allowing him to be made party to the appeal in place of the deceased appellant, who died on June 15, 2021, and proceed to execute the judgment and orders made on March 25, 2015 in the appeal herein; and that the costs of this application be in the cause.
2. Having read Emmanuel Malenya's Motion and the grounds on which it is made, his supporting affidavit sworn on March 4, 2023, the annexed certificate of death of Enock Irungu Malenya (the appellant herein), the Limited Grant of Letters of Administration Ad Litem issued to Emmanuel Malenya on January 13, 2023 and appreciate their self-explanatory contents; and having considered the written submissions of learned counsel for the applicant; and having further noted that Emmanuel Malenya's Motion is not opposed, The Notice of Motion dated March 4, 2023 is hereby allowed in accordance with rule 102 of the *Court of Appeal Rules*. There be no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MAY, 2023.



DR. K. I. LAIBUTA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

